

IN THE UTAH COURT OF APPEALS

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In the matter of the adoption)	MEMORANDUM DECISION
of M.J.S., a minor.)	(Not For Official Publication)
_____)	
J.S. and C.S.,)	Case No. 20060024-CA
)	
Petitioners and)	F I L E D
Appellants,)	(April 6, 2006)
)	
v.)	2006 UT App 138
)	
R.J.B.,)	
)	
Respondent and Appellee.)	

Third District Juvenile, West Jordan Department, 454273
The Honorable Elizabeth A. Lindsley

Attorneys: Ron D. Wilkinson and Brittany L. Thompson, Orem, for
Appellants
Loren M. Lambert, Midvale, for Appellee
Martha Pierce and Felipe E. Rivera, Salt Lake City,
Guardians ad Litem

Before Judges Bench, Greenwood, and Billings.

PER CURIAM:

J.S. and C.S. (Petitioners) appeal the November 22, 2005 ruling that R.J.B. (Father) had established a substantial relationship with M.J.S. (the child) prior to placement for adoption and, as a result, Father's consent to the adoption was required. This appeal is before the court on Father's motion to dismiss, and Petitioners' motion for a stay of further proceedings pending this appeal. The Guardians ad Litem join the motion to dismiss and oppose a stay.

Petitioners filed a petition for adoption in the Third District Juvenile Court in August 2004. In November 2004, Petitioners filed a second petition, captioned "Verified Acknowledgment of and/or Petition for Termination of Parental Rights." The second petition sought a determination that Father had no standing to withhold consent to the adoption or, in the alternative, that Father's parental rights should be terminated.

The juvenile court ruled that because the child was over six months old at the time of placement for adoption, the court was required to determine whether Father had established a "substantial relationship" with the child prior to placement. Utah Code Ann. § 78-30-4.14(2)(a)(i) (Supp. 2005). The court found that the Father had established a substantial relationship with the child; therefore, Father's consent to the adoption was required. The second claim of the petition--that Father's parental rights should be terminated--remains before the court.

The juvenile court clarified that its ruling was limited to the first issue of the petition--"whether [Father's] consent was necessary to proceed with the adoption." After announcing its ruling, the court set the case for further trial on the second issue of the petition--whether grounds exist supporting termination of Father's parental rights. Because the claim seeking an order terminating Father's parental rights in order to allow the adoption to proceed remains pending, the ruling was not final and appealable. Furthermore, the adoption statute cited by Petitioners as support for their finality argument demonstrates that the second petition essentially raised the same issues that the court would be required to resolve in the separate adoption proceeding. No ruling in the adoption proceeding is before this court in this appeal. Utah Code section 78-30-4.16 provides, in part, that if a person whose consent is required refuses to consent, "the court shall determine whether proper grounds exist for the termination of that person's [parental] rights." Utah Code Ann. § 78-30-4.16(1) (Supp. 2005). If the court determines that "there are not proper grounds to terminate the person's parental rights," the court shall: "(i) dismiss the adoption petition; (ii) conduct an evidentiary hearing to determine who should have custody of the child; and (iii) award custody of the child in accordance with the child's best interest." Id.

Petitioners assert that the order is final because the juvenile court "effectively dismissed the adoption petition." This argument misconstrues the relationship between the adoption and termination statutes, as set forth in section 78-30-4.16. The juvenile court has determined only that Father's consent to the adoption is required. The next determination would be whether grounds exist for termination "under Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act." Id. To the extent that there is overlap between the issues in the second petition and the original adoption petition, this is the result of Petitioners seeking a determination of issues in the second petition that are properly a part of the adoption proceeding. Petitioners' arguments strongly suggest that the two proceedings should have been consolidated in juvenile court, but do not state a basis for jurisdiction over this appeal from a nonfinal order.

Finally, Petitioners request that the appeal be considered as an interlocutory appeal if we determine that it is not taken from a final order. See Utah R. App. P. 52(c) (stating that appeals from interlocutory orders in child welfare cases are governed by rule 5 of the Utah Rules of Appellate Procedure). Petitioners did not file a timely petition for permission to appeal satisfying the requirements of rule 5 of the Utah Rules of Appellate Procedure. Further, an interlocutory appeal of the ruling on a portion of the claims in the second petition would further delay final disposition for the child. In addition, the second petition essentially duplicates the considerations that would be before the court in the adoption proceeding. We deny the request to grant permission to appeal from the interlocutory order.

We dismiss the appeal for lack of jurisdiction without prejudice to a timely appeal taken after entry of a final, appealable order resolving the remaining claims. Our dismissal renders the motion to stay moot, and we deny a stay on that basis.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge